

REMARKS

Applicant respectfully requests Petition for Revival of the present application. An improper RCE was filed on December 2, 2002. Applicant had intended to file a CPA which does not require filing a response to any outstanding office action. Since a CPA had been filed on September 28, 2001, the PTO treated the second CPA filed on December 2, 2002 as a RCE which requires filing a response to any outstanding office action.

**35 U.S.C. §102(b)**

The variety 'Bernini' was first sold in October 1997 in the Netherlands, however there can be no basis for a rejection under 35 U.S.C. § 102(b). Even though 'Bernini' has been described in a printed publication, these publications did not enable production of 'Bernini' since they do not provide a method of making 'Bernini'.

**Requirement for Information Under 37 CFR 1.105**

With respect to the requirement for information under 37 CFR § 1.105 regarding sale or other public distribution of the claimed plant variety anywhere in the world, the variety 'Bernini' was first sold and made publicly available in October, 1997 in The Netherlands. Copies of the published notice of application, denomination and registration for 'Bernini' in the Netherlands are attached hereto.

**Objections to the Disclosure and Claim Rejection  
Under 35 U.S.C. §112 (first and second paragraphs)**

In response to the Examiner's alphabetical listing of questions A through R under 35 U.S.C. §1.112, we have listed our responses in alphabetical order to answer each of the Examiner's questions. The specification has been amended in accordance with these responses.

A. The specification was amended at page 4, line 12, after the term "Vigorous", the following to add --from the beginning of vegetation to the first flowering takes 90 days, depending on cultivation conditions, especially temperature--.

B. The specification was amended at page 6, line 10, to add the recitation -- yellow-green-- after "RHS 145D", and at line 14 of the same page, to replace the recitation "Dark-pink" with --greyed purple--.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should an improper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date January 12, 2004  
FOLEY & LARDNER  
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JAN 16 2004  
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